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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 340.

THE CHEROKEE NATION AND THOMAS M. BUFFINGTON, JOSEPH M. LA HAY, JOHN R. McINTOSH, HENRY C. MEIGS, WHO SUE AS WELL FOR THEMSELVES AS FOR ALL OTHER CITIZENS OF THE CHEROKEE NATION OF INDIANS RESIDING IN THE INDIAN TERRITORY, APPELLANTS,

vs.

ETHAN A. HITCHCOCK, SECRETARY OF THE INTERIOR.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

FILED MAY 31, 1902.

(18,549.)

(18,549.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., MAY 28, 1902.

a Court of Appeals of the District of Columbia, April Term, 1902.

THE CHEROKEE NATION and THOMAS M. BUFFINGTON, Joseph M. La Hay, John R. McIntosh, Henry C. Meigs, Who Sue as Well for Themselves as for All Other Citizens of the Cherokee Nation of Indians Residing in the Indian Territory, Appellants,
vs.
ETHAN A. HITCHCOCK, Secretary of the Interior.
No. 1221.

Appeal from the supreme court of the District of Columbia.

b Supreme Court of the District of Columbia.

THE CHEROKEE NATION and THOMAS M. Buffington, Joseph M. La Hay, John R. McIntosh, Henry C. Meigs, Who Sue as Well for Themselves as for All Other Citizens of the Cherokee Nation of Indians Residing in the Indian Territory, Complainants,
vs.
ETHAN A. HITCHCOCK, Secretary of the Interior, Defendant.
No. 22712. In Equity.

UNITED STATES OF AMERICA, *District of Columbia*, } *ss:*

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Bill of Complaint.*

Filed October 23, 1901.

In the Supreme Court of the District of Columbia.

THE CHEROKEE NATION and THOMAS M. Buffington, Joseph M. La Hay, John R. McIntosh, Henry C. Meigs, Who Sue as Well for Themselves as for All Other Citizens of the Cherokee Nation of Indians Residing in the Indian Territory, Complainants,
vs.
ETHAN A. HITCHCOCK, Secretary of the Interior, Respondent.
No. 22712. In Equity, Docket 51.

To the honorable the chief justice and the associate justices of the supreme court of the District of Columbia:

Your orators, The Cherokee Nation, and Thomas M. Buffington, principal chief, and Joseph M. La Hay, treasurer, of the Cherokee

Nation, and John R. McIntosh and Henry C. Meigs, all citizens of the Cherokee Nation, who sue as well for themselves as for all other citizens of said nation, and who reside in the said Cherokee Nation, in the Indian Territory, respectfully represent unto your honors:

1. That the Cherokee Nation is a body politic whose existence as such has been recognized by the United States from the foundation of the Government of the United States unto the present time; that, it has an established government with a written constitution and a legislative council, similar to the legislatures in the several States, and its laws are printed in the English language soon after their enactment; that it
2 has entered into numerous treaties with the United States, and that it has received from the United States a patent to its lands which lands are hereinafter more particularly described. That your orator, Thomas M. Buffington, is the principal chief of said nation, and that as such he has taken an oath that he will, to the best of his ability, preserve, protect, and defend the constitution of the Cherokee Nation, and it is his duty to take care that the laws of the nation be faithfully executed; that Joseph M. La Hay is the treasurer of the nation, and as such he is authorized by the laws of the nation to collect all revenues which may be due and payable to the nation, and that he has given a bond for the faithful discharge of his duties; that John R. McIntosh and Henry C. Meigs, and the other complainants named are citizens of the Cherokee Nation, and that they all reside in the Cherokee Nation, in the Indian Territory, and are each entitled to all the rights, privileges and immunities of the other members of the Cherokee Nation of Indians; and that by a special act of Congress, passed at the second session of the 56th Congress they and all other members of the Cherokee Nation of Indians were declared to be citizens of the United States and entitled to all the rights, privileges and immunities of other citizens of the United States; that the citizens of said nation number over thirty-five thousand, and their names are too numerous to be inserted as parties to this suit; that said individual complainants, on this account, sue as well for themselves as for all other members of the Cherokee Nation of Indians who reside in the Cherokee Nation, in the Indian Territory.

3 2. That the respondent, Ethan Allen Hitchcock, is a citizen of the United States, a legal resident of the State of Missouri, temporarily residing in the District of Columbia, and holds the official position in the Government of the United States of Secretary of the Department of the Interior, and as such is charged with the supervision of Indian affairs and the execution of the laws of the United States relating to the same.

3. That by a treaty between the United States and the chiefs and head men of the Cherokee Nation west of the Mississippi, dated May 6, 1828, and proclaimed May 28, 1828, in article two (2) the United States agreed to "possess the Cherokees and to grant it to them forever," which guarantee was thereby solemnly proclaimed, of seven millions of acres of land, the boundaries of which are given in said article, together with and in addition thereto, a perpetual outlet west

and a free and unmolested use of all the country lying west of the western boundaries of the described limits as far as the sovereignty of the United States and their right of soil extended. Said treaty is printed at page 311 of the 7th U. S. Statutes at Large and the same is hereby referred to as an exhibit hereto.

4. That by article one (1) of a treaty between the United States and the Cherokee Nation, the 14th day of February, 1833, and proclaimed April 12th, 1834, the United States renewed the guarantee contained in the aforesaid article two (2) in the above-mentioned treaty of May 6th, 1828, of seven millions of acres of land and the perpetual outlet west described therein, with the reservation only of the right to permit other tribes of red men to get salt from any
saline, or salt plain that might be found on the great western
4 prairies within the limits of the said outlet and with the
promise that "letters patent shall be issued by the United States as soon as practicable for the lands hereby guaranteed." Said treaty is published at page 414 of the 7th Statutes of the United States at Large, and the same is hereby referred to as an exhibit hereto.

5. That by article two (2) of a treaty of December 29th, 1835, between the United States and the chiefs and head men of the Cherokee people, the said guarantees contained in the two treaties hereinbefore mentioned of May 6th, 1828, and February 14th, 1833, were referred to and quoted and a further session of a tract of country described therein, estimated to contain eight hundred thousand acres was made to be conveyed to the Cherokee Nation, and their descendants, by a patent to be issued by the United States.

6. That by article three (3) of the said treaty of December 29th, 1835, the United States agreed that the land ceded in said article two (2) of said treaty, estimated to amount to eight hundred thousand acres, together with the lands ceded by the treaty of 1833, including the outlet, shall all be included in one patent, executed to the Cherokee Nation of Indians by the President of the United States according to the act of May 28th, 1830. Said treaty is published at page 478, 7th Statutes at Large of the United States, and is hereby referred to and made an exhibit hereto.

7. That by a patent dated December 31st, 1838, the lands granted in the treaties hereinabove referred to were conveyed to the Cherokee Nation, the following being the language of the habendum
5 clause thereof, to wit:

"Therefore, in execution of the agreements and stipulations contained in the said several treaties, the United States, has given and granted, and by these presents do give and grant, unto the said Cherokee Nation, the two tracts of lands, so surveyed and hereinbefore described, containing in the whole fourteen millions, three hundred and seventy-four thousand, one hundred and thirty-five acres, and fourteen-hundredths of an acre, and to have and hold the same, together with all the rights, privileges and appurtenances thereto belonging, to the said Cherokee Nation forever; subject, however, to the right of the United States to permit other tribes of red men to get salt on the salt plain on the western prairie referred

to in the second article of the treaty of the twenty-ninth of December, one thousand eight hundred and thirty-five, which salt plain has been ascertained to be within the limits prescribed for the outlet agreed to be granted by said article; and subject also to all the other rights reserved to the United States, in and by the articles hereinbefore recited, to the extent and in the manner, in which said rights are so reserved; and subject also to the condition provided by the act of Congress of the twenty-eight- of May, one thousand eight hundred and thirty, referred to in the above-recited third article, and which condition is, that the lands hereby granted shall revert to the United States, if the said Cherokee Nation becomes extinct, or abandons the same." A copy of said patent is attached hereto marked Exhibit No. 1.

8. That by the grants contained in the several treaties hereinbefore mentioned and the conveyance of the lands thereby granted
6 by the patent referred to, the Cherokee Nation became the owner in fee-simple of the lands so granted and conveyed without any right of reversion, unless the nation should become extinct, or should abandon said lands, neither of which contingencies has happened.

9. It was also covenanted and agreed by said treaty of 1835, that the said lands, thus ceded to the Cherokee Nation, should in no future time, without the consent of said nation, be included within the territorial limits or jurisdiction of any State or Territory; but that the United States would secure to the Cherokee Nation the right by their national council, to make and carry into effect all such laws as the Cherokees may deem necessary for the government and protection of the persons and property within their own country belonging to their people, or such persons as have connected themselves with them. That by the terms of the treaty of 1846 it was provided; "That the lands now occupied by the Cherokee Nation shall be secured to the whole Cherokee people for their common use and benefit; and a patent shall issue for the same." That said patent was to be in conformity with the treaties theretofore made and, in conformity with the act of Congress of May 28, 1830, which authorized the President of the United States, in making exchanges of lands with the Indian tribes, "to assure the tribe or nation with which the exchange is made, that the United States will forever secure and guarantee to them and their heirs or successors, the country so exchanged with them," and if they prefer it that the United States will cause a patent or grant to be made and executed to them for the same; and that the only condition attached to said grant was that the lands should revert to the United States, if the Indians became extinct, or abandoned the
7 same. That the patent indicated and promised by this treaty of 1846 was never executed or delivered to said nation, but the said treaty furnishes the construction which is to be placed on the treaties and patent theretofore executed. That during the 63 years which have elapsed since said patent was executed and delivered, its provisions have been recognized and observed by all the officials and departments of the Government of the United States;

that the Cherokee Nation has never, by any act of its national council or otherwise, agreed to relinquish to the United States its right and the right of its citizens to the exclusive use, control and occupancy of any of the seven millions of acres of its lands, upon which the Cherokee people now reside, nor has said nation ever agreed to authorize any officer or department of the United States to grant persons or corporations, not citizens of the Cherokee Nation, the right to use, or occupy any of the lands of the nation for the purpose of cultivation, mining or for any other purpose whatever, except in some instances for the right of way for railroad corporations.

10. Your orators further represent unto your honors, that numerous applications have been made to the respondent, as Secretary of the Interior, by persons who are not citizens of the Cherokee Nation, for leases of lands belonging to said nation for the purpose of mining in said nation for oil, gas, coal and other minerals; that among such applications, is the application of a corporation, known as the Cherokee Oil and Gas Company, which it is alleged was organized under the laws of the State of Arkansas, but the names of the stockholders of which are unknown to your orators; that said applica-

8 tion is for a lease or leases upon about ninety-four thousand acres of land belonging to the Cherokee Nation, and now occupied by citizens of the nation, under the laws and customs of the nation and used by them for agricultural and grazing purposes.

11. That the lands in the Cherokee Nation will in the near future, and in all probability within the next two years, be allotted to the citizens thereof and each of whom will be entitled to his proportionate share of said lands; that it is the desire of said citizens to take their respective allotments free from any encumbrance whatever, and especially free from any mining claims or leases upon such lands; that under the said treaties and the patent from the United States, said lands are the sole and exclusive property of the Cherokee Nation, which holds them in trust for all the members of the tribe, except as otherwise provided in treaties and agreements with the United States and other Indian tribes; that "the improvements made thereon, and in possession of the citizens of the nation, are the exclusive and indefeasible property of the citizens respectively who made, or may rightfully be in possession of them," as provided in section 2 of article 1 of the constitution of the Cherokee Nation; that numerous citizens of the said nation are now in possession of the lands embraced in said application and have made improvements thereon, which are their exclusive property.

12. Your orators are informed and believe that the said respondent, as Secretary of the Interior, is now giving favorable consideration to said application to the extent of a lease, or leases, upon eighteen sections, or upon eleven thousand five hundred and twenty (11,520) acres of said lands; for the purpose of mining for oil and

9 gas thereon for the period of 15 years, and your orators are informed and believe that said respondent is about to grant said application to said extent and for said purpose and

time and thereby is threatening to deprive your orators, and the other members of the Cherokee Nation of Indians of their right to the exclusive use and occupation of said lands; and that said respondent is as your orators are informed and believe, about to execute a lease or leases upon all or a part of said eighteen sections of land to said corporation in utter disregard of the provisions of said treaties and the patent of the United States granting to the Cherokee Nation the said seven millions of acres of land, and the right of its citizens to their exclusive use and occupancy, and notwithstanding the fact that the individual members of the Cherokee Nation have a right to use parcels of the land held by the nation for the benefit of all its members, subject only to such rules as its governing authority may prescribe (117 U. S. 288); and notwithstanding the further fact that, by the execution and delivering of a patent to said lands to the Cherokee Nation, the Secretary of the Interior and the Interior Department ceased to have any further official duties to perform in respect to said lands in so far as their control, use and occupancy are concerned. And that the granting of said application in whole or in part, and the leasing of said lands or any part thereof, to said corporation will deprive the said nation and its citizens of the right to the exclusive use and occupation of said lands to the extent that mining leases may be granted to said lands by said respondents, and the granting of such lease or leases will be in violation of the rights of property secured to its citizens by the Constitution of the United States, and of the solemn treaty provisions existing between the said nation and the United States, and in violation of the letter and spirit of the provisions of the patent to said lands granted to said nation by the United States; and unless restrained by this honorable court said respondent will cause irreparable injury, wrong and oppression to, and deprivation of, the property rights of your orators and of all other citizens of the Cherokee Nation of Indians; that said eighteen sections of land are of great value, to wit, of the value of ten dollars an acre, at least, and that said lands are believed to contain coal, oil, or petroleum to very large amount, and that the right to mine said lands for oil is of very great value.

13. Your orators pray that the said respondent, Ethan A. Hitchcock, Secretary of the Interior, and his counselors, attorneys, solicitors and agents, and all other officials clerks, agents and employees of the United States acting under the orders and instructions of said respondent, may be restrained by an injunction issuing out of this honorable court from proceeding further in the matter of granting said application or any part thereof for mining leases on said lands, and from proceeding further against your orators and against the other members of said Cherokee Nation of Indians, in the matter of the granting of said application or any part thereof, or in the matter of considering, hearing or granting any other application or applications that have been made, or may hereafter be made, for mining leases to land in said nation, by any person or persons whomsoever; and that your orators and the other members of said nation of Indians, in whose behalf this suit is brought, may have such other and

further relief as the nature of this case and equity and good conscience may require.

11 14. And may it please your honors to grant unto your orators the writ of injunction, issuing out of and under the seal of this court, directed to the said Ethan A. Hitchcock, his counselors, attorneys, solicitors and agents and all other officers, clerks, agents and employees of the United States acting under the orders and instructions of said respondent, commanding them and each of them to absolutely desist and refrain from doing any of the acts and things complained of as set forth herein, and especially from proceeding further in the matter of granting the application of the said Cherokee Oil and Gas Company, or any part thereof, for mining leases on any of the lands belonging to the Cherokee Nation, or from granting to any other person or persons whomsoever any mining rights privileges or leases on or to any of the lands belonging to the Cherokee Nation.

15. And your orators further represent unto your honors that they and the other members of the Cherokee Nation of Indians, in whose behalf this suit is brought, are wholly without adequate remedy at law, that failure to grant the relief prayed will cause a multiplicity of suits in said Cherokee Nation and cast a cloud upon the title of the Cherokee Nation to said lands, and depreciate their value as the prospective allotments of individual citizens of the nation, and that the granting of mining leases on or to said lands will result in irreparable injury and loss to your orators and to, all the citizens of the Cherokee Nation. Your orators therefore pray your honors to grant unto your orators, pending a final hearing of this case, a temporary injunction, directed to said Ethan A. Hitchcock, issued in the words as aforesaid, restraining him, his

12 counselors, attorneys, solicitors and agents and all other officers, clerks, agents and employees of the United States acting under his orders and instructions, commanding them and each of them to absolutely desist and refrain from doing any of the acts and things complained of as herein set forth, and especially from proceeding further in the matter of granting the application of said corporation or any part of such application; or the application of any other persons whomsoever for mining leases on the lands belonging to the Cherokee Nation, and that your honors will grant unto your orators temporarily such other and further relief as the nature of this case and equity may require.

And upon a final hearing of this cause, your orators pray that said injunction may be made perpetual, and that said respondent pay the costs of this suit.

16. To the end, therefore, that said respondent may, if he can show why your orators should not have the relief hereby and herein prayed for, and may, upon his corporate oath, and according to the best and utmost of his knowledge, remembrance, information and belief, full, true, direct and perfect answer make to such of the several interrogatories hereinafter numbered and set forth as by the note hereunder written he is required to answer; that is to say:—

1. Whether it is not a fact that the aforesaid Cherokee Oil and

Gas Company, a corporation organized under the laws of the State of Arkansas, has made and filed in the office of the Secretary of the Interior an application for a mining lease or leases to lands in the Cherokee Nation, to the amount of ninety-four thousand acres, to run for the period of fifteen years, and whether it is not a fact that the said respondent is about to grant such application as

13 to a portion of said lands?

2. Whether it is not a fact that treaties were made and executed between the United States and the Cherokee Nation as set forth in paragraphs 3. 4. 5 and 6 of the foregoing bill of complaint, and whether said treaties did not contain agreements to the effect that the United States would cede to the Cherokee Nation seven million acres of land west of the Mississippi river, being the lands upon which the Cherokee Indians, who are citizens of said nation, now reside?

3. Whether it is not a fact that, in pursuance of the provisions of said treaties, the United States did execute and deliver to the Cherokee Nation a patent to said seven million acres of land, and that said patent was dated December 31st, 1838, and that it gave and granted to said Cherokee Nation the said seven million acres of land, together with all the rights, privileges and appurtenances thereto belonging, to said Cherokee Nation forever; and that said lands were not to revert to the United States unless said nation of Indians became extinct or abandoned said lands?

4. Whether it is not a fact that, in conformity with an act of Congress of May 28, 1830, the President of the United States assured the Cherokee tribe of Indians or nation, that the United States would forever secure and guarantee to them and their heirs or successors the country or lands upon which said Cherokees reside?

5. Whether it is not a fact that the Cherokee Nation has never relinquished the right of its citizens to the exclusive use and occupation of said lands?

14 6. Whether it is not a fact that there are other applications for leases of lands in the Cherokee Nation for mining purposes, made by persons, not citizens of the Cherokee Nation, now pending in the Interior Department?

7. Whether it is not a fact that said respondent is now considering the application of the said Cherokee Oil and Gas Company, and that he is about to grant said application to the extent of eighteen sections of land, which are embraced in said application and which lands belong to the Cherokee Nation?

17. Therefore, will your honors grant unto your orators the writ of subpœna, issuing out of and under the seal of this court, to be directed to the said respondent, Ethan A. Hitchcock, commanding him, by a certain day, and under a certain penalty therein inserted, to appear before your honors, in the supreme court of the District of Columbia, aforesaid, and then and there answer the premises, and abide the order and decree of the court.

WILLIAM M. SPRINGER,
Solicitor for Complainants Henry C. Meigs.

NOTE.—The respondent, Ethan A. Hitchcock, is required to answer the interrogatories numbered respectively 1, 2, 3, 4, 5, 6 and 7.

UNITED STATES OF AMERICA, } ss:
District of Columbia, }

On this 23rd day of October, 1901, before me, personally appeared
Henry C. Meigs, one of the complainants in the foregoing
15 bill of complaint, and makes oath that the statements therein made, as of his own, or complainant's knowledge, are true, and those on information he believes to be true.

JOHN R. YOUNG, *Clerk.*

16 EXHIBIT No. 1.

Patent.

The United States of America to all to whom these presents shall come, Greeting:

Whereas, by certain treaties made by the United States of America, with the Cherokee Nation of Indians of the sixth of May, one thousand eight hundred and twenty-eight, the fourteenth of February, one thousand eight hundred and thirty-three, and the twenty-ninth of December, one thousand eight hundred and thirty-five, it was stipulated and agreed on the part of the United States, that in consideration of the promises mentioned in the said treaties, respectively, the United States should guaranty, secure and convey by patent to the said Cherokee Nation certain tracts of land; the description of which tracts, and the terms and conditions on which they were to be conveyed, are set forth in the second and third articles of the treaty of the twenty-ninth of December, one thousand eight hundred and thirty-five, in the words following, that is to say:—

"Article 2d. Whereas by the treaty of May sixth, one thousand eight hundred and twenty-eight, and the supplementary treaty thereto of February fourteenth, one thousand eight hundred and thirty-three, with the Cherokees west of the Mississippi, the United States guaranteed and secured, to be conveyed by patent to the Cherokee Nation of Indians the following tract of country: Beginning at a point on the old western territorial line of Arkansas Territory, being twenty-five miles north from the point where the territorial line crosses Arkansas river, thence running from said
17 north point south in the said territorial line, where the said territorial line crosses Verdigris river; thence down said Verdigris river to the Arkansas river; thence down said Arkansas to a point where a stone is placed opposite the east or lower bank of Grand river, at its junction with the Arkansas; thence running south forty-four degrees west one mile; thence, in a straight line, to a point four miles northerly from the mouth of the north fork of the Canadian, thence along the said four-miles line to the Canadian, thence, down the Canadian to the Arkansas; thence, down the

Arkansas to that point on the Arkansas where the eastern Choctaw boundary strikes said river, and running thence with the western line of Arkansas Territory, as now defined, to the southwest corner of Missouri, thence, along the western Missouri line to the land assigned the Senecas; thence, on the south line of the Senecas to Grand river, thence, up said Grand river, as far as the south line of the Osages, extended, if necessary; thence, up and between said south Osages line, extended west, if necessary, and a line drawn due west from the point of beginning to a certain distance west, at which a line running north and south from the said Osage line to said due west line, will make *seven millions of acres* within the whole described boundaries. In addition to the seven millions of acres of land thus provided for and bounded, the United States further guaranty to the Cherokee Nation *a perpetual outlet west* and a free and unmolested use of all the country west of the western boundary of said seven millions of acres, as far west as the sovereignty of the United States and their right of soil extended. *Provided, however,* That if the saline or salt plain on the western prairie shall fall within said limits prescribed for said outlet, the right is reserved to the United States
18 to permit other tribes of red men to get salt on said plain, in common with the Cherokees, and *letters patent* shall be issued by the United States as soon as practicable for the land hereby guaranteed. *And whereas*, it is apprehended by the Cherokees that in the above cession there is not contained a sufficient quantity of land for the accom-odation of the whole nation, on their removal west of the Mississippi the United States, in consideration of the sum of *five hundred thousand dollars* therefore hereby covenant and agree to convey to the said Indians and their descendants, by patent, in fee simple, the following *additional tract of land*, situated between the west line of the State of Missouri and the Osage reservation, beginning at the southeast corner of the same, and runs north along the east line of the Osage lands fifty miles, to the northeast corner thereof; and thence east to the west line of the State of Missouri; thence with said line south, fifty miles; thence west to the place of beginning; estimated to contain *eight hundred thousand acres of land;* but it is expressly understood, that if any of the lands assigned the *Quapaws*, shall fall within the aforesaid bounds, the same shall be reserved and excepted out of the lands above granted, and a *pro rata* reduction shall be made in the price to be allowed to the United States for the same by the Cherokees.

Art. 3d. The United States also agree that the lands above ceded by the treaty of February fourteenth, one thousand eight hundred and thirty-three, including the outlet, and those ceded by this treaty, shall all be included in one patent, executed to the Cherokee Nation of Indians by the President of the United States, according to the provisions of the act of May twenty-eight, one thousand eight hundred and thirty. It is,
19 however, agreed that the military reservation at Fort Gibson shall be held by the United States. But should the United States abandon said post, and have no further use for the same, it shall revert to the Cherokee Nation. The United States

shall always have the right to make and establish such *post* and *military roads* and *forts*, in any part of the Cherokee country, as they may deem proper for the interest and protection of the same, and the free use of as much land, timber, fuel and materials of all kinds, for the construction and support of the same, as may be necessary. *Provided*, That if the private rights of individuals are interfered with, a just compensation therefore shall be made." *And whereas*, the United States have caused the said tract of seven millions of acres, together with the said perpetual outlet, to be surveyed in one tract, the boundaries whereof are as follows: Beginning at a mound of rocks four feet square at base, and four and a half feet high, from which another mound of rocks bears south one chain, and another mound of rocks bears west one chain, on what has been denominated the old western territorial line of Arkansas Territory twenty-five miles north of Arkansas river; thence south twenty-one miles and twenty-eight chains to a post on the northeast bank of the Virdigris river, from which a hackberry, fifteen inches diameter, bears south sixty-one degrees thirty-one minutes east, forty-three links, marked C. H. L. and a cottonwood forty-two inches diameter bears south twenty-one degrees fifteen minutes east, fifty links, marked C. R. K. L.; thence down the Virdigris river, on the northeast bank, with its meanders to the junction of the Virdigris and Arkansas rivers; thence from the lower bank of Virdigris river on
20 the north bank of Arkansas river, south forty-four degrees, thirteen minutes, east, fifty-seven chains, to a post on the south bank of Arkansas, opposite the eastern bank of Neosho river, at its junction with Arkansas, from which a red oak thirty-six inches diameter, bears south seventy-five degrees, forty-five minutes west, twenty-four links, and a hickory, twenty-four inches diameter, bears south eighty-nine degrees east four links; thence south fifty-three degrees west, one mile to a post from which a rock bears north fifty-three degrees east, fifty links and a rock bears south eighteen degrees, eighteen minutes west, fifty links; thence south eighteen degrees, eighteen minutes west thirty-three miles twenty-eight chains and eighty links, to a rock from which another rocks bears north eighteen degrees eighteen minutes east fifty links, and another rock bears south fifty links, thence south four miles to a post on the lower bank of the north fork of Canadian river, at its junction with Canadian river, from which a cottonwood, twenty-four inches diameter, bears north eighteen degrees east, forty links, and a cottonwood, fifteen inches diameter, bears south nine degrees east fourteen links; thence down the Canadian river on its north bank to its junction with Arkansas river; thence down the main channel of Arkansas river to the western boundary of the State of Arkansas, at the northern extremity of the eastern boundary of the lands of the Choctaws, on the south bank of Arkansas river, four chains and fifty-four links, east of Fort Smith; thence north seven degrees, twenty-five minutes west, with the western boundary of the State of Arkansas, seventy-six miles, sixty-four chains and fifty links, to the southwest corner of the State of Missouri; thence north on the western

boundary of the State of Missouri, eight miles, forty-nine
21 chains and fifty links, to the north bank of Cowskin, or Seneca river, at a mound six feet square at base and five feet high, in which is a post marked on the south side Cor. n. Ch. Ld.; thence west on the southern boundary of the lands of the Senecas, eleven miles and forty-eight chains, to a post on the east bank of Neosho river, from which a maple, eighteen inches diameter, bears south thirty-one degrees east, seventy-two links; thence up Neosho river, with its meanders, on the east bank, to the southern boundary of Osage lands, thirty-six chains and fifty links, west of the southeast corner of the lands of the Osages, witnessed by a mound of rocks on the west bank of Neosho river; thence west on the southern boundary of the Osage lands, to the line dividing the territory of the United States from that of Mexico, two hundred and eighty-eight miles, thirteen chains and sixty-six links, to a mound of earth, six feet square at base, and five and a half feet high, in which is deposited a cylinder of charcoal, twelve inches long and four inches diameter; thence south along the line of the territory of the United States and of Mexico sixty miles and twelve chains, to a mound of earth six feet square at base and five and a half feet high, in which is deposited cylinder of charcoal, eighteen inches long and three inches diameter; thence east, along the northern boundary of Creek lands, two hundred and seventy-three miles, fifty-five chains and sixty-six links, to the beginning; containing within the survey *thirteen millions, five hundred and seventy-four thousand, one hundred and thirty-five acres and fourteen-hundredths of an acre.* *And whereas*, the United States have also caused the said tract of eight hundred
22 thousand acres to be surveyed, and have ascertained the boundaries thereof to be as follows:

Beginning at southeast corner of Osage lands, described by a rock, from which a red oak twenty inches diameter bears south twenty-seven degrees east, seventy-six links, and burr oak, thirty inches diameter, bears south fifty-nine degrees west one chain; and another burr oak, thirty inches diameter bears north eight degrees west, one chain and thirty-seven links; and another burr oak forty inches diameter bears north thirty degrees west, one chain and eighty-one links and running east twenty-five miles to a rock on the western line of the State of Missouri, from which a post oak ten inches diameter bears north forty-eight degrees, thirty minutes, east, four chains, and a post oak twelve inches diameter bears south sixty-two degrees east, five chains; thence north, with the western boundary of the State of Missouri, fifty miles, to a mound of earth five feet square at base and four and a half feet high; thence west twenty-five miles to the northeast corner of the lands of the Osages, described by a mound of earth six feet square at base and five feet high; thence south along the eastern boundary of Osage lands, fifty miles, to the beginning; containing eight hundred thousand acres.

Therefore, in execution of the agreements and stipulations contained in the said several treaties, the United States have *given* and *granted*, and by these presents do *give* and *grant*, unto the said Cher-

okee Nation, the two tracts of land, so surveyed and hereinbefore described, containing in the whole *fourteen millions, three hundred and seventy-four thousand, one hundred and thirty-five acres, and fourteen-hundredths of an acre*, to have and to hold the same, together with all the rights, privileges and appurtenences thereto be-
23 longing to the said Cherokee Nation forever; subject, however to the right of the United States to permit other tribes of red men to get salt on the salt plain on the western prairie referred to in the second article of the treaty of the twenty-ninth of December, one thousand eight hundred and thirty-five, which salt plain has been ascertained to be within the limits prescribed for the outlet agreed to be granted by said article; and subject also to all the other rights reserved to the United States, in and by the articles hereinbefore recited, to the extent and in the manner, in which the said rights are so reserved; and subject also to the condition provided by the act of Congress of the twenty-eight- of May, one thousand eight hundred and thirty, referred to in the above-recited third article, and which condition is, that the lands hereby granted shall revert to the United States, if the said Cherokee Nation becomes extinct, or abandons the same.

In testimony whereof, I, Martin Van Buren, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, the thirty-first day of December, in the year of our Lord, one thousand eight hundred and thirty-eight, and of the Independence of the United States, the sixty-third.

By the President,

[SEAL.] M. VAN BUREN.

(Signed) H. M. GARLAND,
Recorder of the General Land Office.

24 *Rule to Show Cause.*

Filed October 23, 1901.

In the Supreme Court of the District of Columbia.

THE CHEROKEE NATION ET AL.
vs.
ETHAN A. HITCHCOCK, The Secretary of the Interior. } No. 22712. Equity. Docket 51.

Upon consideration of the bill in the above-entitled cause, it is, this 23rd day of October, A. D. 1901, ordered that the defendant show cause, if any he has, on the 31st day of October, 1901, at eleven (11) o'clock a. m., why temporary injunction should not be granted as therein prayed, provided a copy of this order be served upon said defendant on or before the 26th day of October, 1901.

A. B. HAGNER, *Justice.*

Marshal's Return.

Served copy of within order—on defendant personally, Oct. 23, 1901.

AULICK PALMER, *Marshal.*

25 *Demurrer.*

Filed November 1, 1901.

In the Supreme Court of the District of Columbia.

THE CHEROKEE NATION and THOMAS M. BUFFINGTON, Joseph M. La Hay, John R. McIntosh, Henry C. Meigs, Who Sue as Well for Themselves as for All Other Citizens of the Cherokee Nation of Indians Residing in the Indian Territory, Complainants,
v.
ETHAN A. HITCHCOCK, Secretary of the Interior, Respondent.
} In Equity.

The above-named defendant by protestation, not confessing or acknowledging all or any of the matters and things in the complainants' bill to be true in such manner and form as the same are therein set forth and alleged, does demur to said bill of complaint upon the following grounds:

1. Said bill is bad in substance and for want of equity, and does not state facts sufficient to entitle complainants to the relief prayed for or to any relief;

2. The court has no jurisdiction over the subject-matter of the suit;

3. There is a defect of parties defendant.

WILLIS VAN DEVANTER,
Assistant Attorney General.

Defendant will urge, as reasons for demurrer:

1. That the matters named in the bill are matters of administration, which cannot be taken away from an executive department and carried into the courts;

26 2. That the Cherokee Oil and Gas Company, named in the bill, is a necessary party to the suit, as shown by the bill;

3. That the defendant is proceeding in conformity with the act of Congress approved June 28, 1898 (30 Stat., 495) which is a valid exercise of the power of Congress over the property of an Indian tribe.

I hereby certify that in my opinion the foregoing demurrer is well founded in law.

WILLIS VAN DEVANTER,
Assistant Attorney General.

UNITED STATES OF AMERICA, } ss:
District of Columbia, }

Ethan A. Hitchcock, who, as Secretary of the Interior, is the defendant in the above-entitled suit, being duly sworn, on oath says, that the foregoing demurrer is not interposed for delay.

E. A. HITCHCOCK.

Subscribed in my presence and sworn to before me this first day of November, A. D. 1901.

WM. H. DE LACY,
Notary Public, D. C.

[SEAL.]

27 *Decree.*

Filed May 6, 1902.

In the Supreme Court of the District of Columbia.

THE CHEROKEE NATION ET AL. }
vs. } In Equity. No. 22712.
ETHAN A. HITCHCOCK ET AL. }

Come now the parties to this cause, by their respective solicitors, and by the agreement of the parties stated in open court this cause is at this time submitted to the court upon the demurrer of the respondents to the complainants' bill and the same being argued by counsel and the court, being fully advised in the premises, does now consider, order, and decree that the said demurrer be, and the same is hereby sustained, and the complainants electing to stand upon their said bill, it is, by the court, considered, ordered, and decreed that the bill of complaint be, and the same is hereby dismissed; that the respondents go hence without day, and that the respondents recover from the complainants their costs, to be taxed by the clerk. Whereupon the complainants take an appeal to the Court of Appeals of the District of Columbia and ask that the same be noted in this decree, which is accordingly done; and the amount of the bond to be given by appellants to cover costs is hereby fixed at one hundred dollars in lieu of giving bond, the complainants, at their option, may deposit in the clerk's office the sum of one hundred dollars to cover such costs.

Dated, May 6, 1902.

A. B. HAGNER, *Justice.*

28 *Opinion of Justice Hagner.*

Filed May 7, 1902.

In the Supreme Court of the District of Columbia.

THE CHEROKEE NATION and THOMAS M. Buffington, Principal Chief; Joseph M. La Hay, Treasurer, and John R. McIntosh and Henry C. Meigs *vs.* ETHAN A. HITCHCOCK, Secretary of the Interior.	No. 22712. Equity.

This bill is filed in the name of the Cherokee Nation and of Buffington, principal chief of the Cherokee Nation, of La Hay, treasurer, and of McIntosh and Meigs, citizens of the nation, "who sue as well for themselves as for all other citizens of said nation, and who reside in the said Cherokee Nation in the Indian Territory.

Their ground of complaint is that the defendant, as Secretary of the Interior, is about to execute divers leases to persons not citizens of the Cherokee Nation and among others to a corporation organized under the laws of the State of Arkansas by the name of the Cherokee Oil and Gas Company, for the purpose of mining upon lands belonging to the nation for oil, gas, coal and other minerals; and the contention of the complainants is that the act of Congress, under which the Secretary claims the right to grant such leases does not confer the power so claimed by a just construction of its terms: and that if any such statute did confer such power in express terms, it would be unconstitutional, and therefor void and inoperative against the several treaties entered into between the United States and the Cherokee Nation, and in derogation of the patent
29 signed by the President under the authority of the treaties and the direction of the act of Congress requiring the issuing of the patent.

The prayer of the bill is that an injunction shall issue forbidding the Secretary from granting any leases under the supposed power conferred by the act of Congress relied on by the Secretary; and particularly from granting the contemplated mining leases for 94,000 acres of land belonging to the Cherokee Nation, and now occupied by its citizens for agricultural and grazing purposes, to the Cherokee Oil and Gas Company for a term of fifteen years, in violation of the rights of the Cherokee Nation and to the irreparable injury of its people.

The Secretary interposed a demurrer to the bill, and for grounds of objection insisted, in effect:

First. That the matters in the bill set forth involve questions of political administration which properly appertain to the executive department of the Government and cannot be taken from its cognizance by the orders of the court.

Second. That the Cherokee Oil and Gas Company is a necessary party to the suit; and

Third. That the acts of the defendant are in conformity with the power properly granted by the act of Congress approved 28th June 1898 (30 Stats. 495), which is a valid exercise of the power of Congress over the property of an Indian tribe.

The questions thus presented were very elaborately argued by counsel. There was then pending before the Court of Appeals the cause of Lone Wolf and others *vs.* The Secretary of the In-
30 terior, which involved many of the questions raised in the case at bar, and for that reason and in compliance with the suggestion of counsel on each side the determination of the present cause was postponed until the decision of the Court of Appeals should be announced.

In the meantime the case of Primeau and others, members of the Sioux tribe residing on the Standing Rock reservation against the Secretary of the Interior, was argued before this court, which presented the claim of the Indians on the reservation named to be protected by injunction from the action of the Secretary in granting leases of portions of their unoccupied lands, under the so-called "permit system" for grazing purposes under the authority of an act of Congress.

The arguments on each side were effectively the same as those presented in the Lone Wolf case; and upon the announcement of the decision of the Court of Appeals in that case, I sustained the demurrer in the Primeau case and dismissed the bill. But, as the counsel in the present cause had so earnestly insisted that the facts here so greatly differentiated the Cherokee case in important particulars from the cases in which the rulings before referred to were made, I withheld my decision for further consideration.

The Court of Appeals in the Lone Wolf case recognized the position so frequently declared by the supreme court that the right of occupancy conferred upon the Indian tribes could not be regarded as a vested right of property of which they could not be divested or deprived without due process of law and upon payment of just compensation.

The court said: "Clearly, there is no authority for this contention. The Indians within the United States or their jurisdiction,
31 have, from the earliest period of the Government, been regarded and treated as the mere wards of the Government, and the lands and reservations occupied by them have been assigned to them by the United States as places of domicil for the tribes, and they hold and occupy such lands with the assent of the United States, and under their authority. Such lands and reservations are held by the Indians subject to the control and dominion of the United States, and such Indian tribes are subject to be changed from one locality or reservation to another, as may best serve the purposes and policy of the Government in the administration of Indian affairs. They have no title in the lands they occupy, except in certain cases where treaties of settlement may have conferred a title in the land; their right is simply to occupy, at the

will of the Government and under its protection. As was said by the Supreme Court, in the case of United States *v.* Kagama, 118 U. S. 379, 'The power of the General Government over these remnants of a race once powerful, now weak and diminished in numbers, is necessary to their protection, as well as to the safety of those among whom they dwell. It must exist in that Government, because it has never existed anywhere else,—because the theater of its exercise is within the geographical limits of the United States,—because it has never been denied, and because it alone can enforce its laws on all the tribes.' Keeping in mind, therefore, the dependent relation of the Indian tribes to the United States, and the nature of the right under which they occupy the lands assigned to them, it is quite clear there is no room for the application of the principle of due process of law as between the Indians and the United States, in a case such as the present. The question is not of a private right, but is of a public qualified right of occupancy by
32 the Indian tribes, and no portion of the Indians can set up or assert any mere individual right as a vested right in the lands as against the Government. The power and control over the subject-matter is vested in Congress, and is therefore a political as distinguished from a judicial subject of inquiry. The agreement of cession and the act of Congress ratifying and adopting such agreement, stand as the deliberate legislative judgment upon the subject, and no matter what terms we may apply to those acts, whether due process of law or some other terms, the agreement of cession as ratified, and the act of Congress ratifying the same, are conclusive: (Murray's Lessee *v.* Hoboken Land Im. Co. 18 How. 272, 285), and no judicial inquiry can be allowed to bring those acts into question; the subject-matter being plainly within the limit of congressional power."

That court also held that where the provisions of a treaty with an Indian tribe are at variance with a subsequent act of Congress, the treaty must yield and the act of Congress must be allowed full force and operation.

Of course, these general expressions in the opinions cited must be held as applicable to all tribes of Indians alike, unless there is made to appear some substantial reason why any particular tribe should be exempt from their application.

In like manner, in the absence of some exception in favor of a particular tribe, the provisions of sec. 13 of the act of 28 June 1898, ch. 817, must be held to apply to all the five civilized Indian tribes alike. The 13th section of that statute authorizes and directs the Secretary of the Interior from time to time to provide rules and regulations in regard to the leasing of oil, coal, asphalt and other minerals in the Indian Territory, and declares
33 all such leases shall be made by the Secretary of the Interior, and that any lease for any such minerals otherwise made, shall be absolutely void; and the residue of the section provides regulations as to the duration, dimensions, royalties and sundry other matters connected with leasing of the *of the* mineral lands. That the provisions of that act effectively confer upon the Department of the Interior the sole right to grant such leases, and declares

all leases not issued by the Secretary to be void, is clear; and if these provisions apply to the lands of the Cherokee Nation, the leases sought to be enjoined by this suit may lawfully be granted by that officer.

The only reason assigned for exempting the Cherokee Nation from the effect of these decisions and of the act of Congress before us, is based upon the broad language of the treaties of May 6, 1828, art. 2, (7 Stats. 311); of February 14, 1833, art. 1, (7th Stats. 414); of December 29, 1835, arts. 2 & 3 (7th Stats. 478); and of the patent issued to the Cherokee Nation on the 31st December 1838. The particular averment in the bill on this point is "that by the grants contained in the several treaties hereinbefore mentioned, and the conveyance of the lands thereby granted by the patent referred to, the Cherokee Nation *became the owner in fee-simple of the lands so granted and conveyed*, without any reservation, unless the nation should become extinct or should abandon said lands, neither of which contingencies has happened."

In the opinion of the Court of Appeals on the motion for a rehearing in the Lone Wolf case, attention is called to the fact that "the treaty relied on in the case did not vest in the Indians, either
34 in their individual or tribal capacity, anything more than the right to occupy the lands as against the United States until it was found necessary to make other provisions for them. There was no grant of estates, either of freehold or leasehold, only a mere right to occupy and use the lands, according to the habits and customs of the Indians."

The contention of the Cherokee Nation in the present cause would tend to place the quality and extent of their title and the possession of their lands upon higher grounds, if their contention is correct. But I do not see that the treaties and the patent cited confer upon the Cherokees the extensive title claimed by the pleader in the above section of the bill.

By the terms of the treaty of 1828, the United States "agree to possess and guarantee to the Cherokees forever" seven millions of acres of land; but with no qualification of the extent and character of the possession thus guaranteed.

By the treaty of 1833, the United States repeat this guarantee as to the 7,000,000 acres; and in addition the United States further guarantee to the nation a perpetual outlet west and a free and unmolested use of all the count-y lying west of the western boundary of the seven million acres, as far west as the sovereignty of the United States extends.

Absolute as the guarantee of possession of the lands described in these two treaties seems to be, it is not a grant in either case of a *fee-simple title*. And in view of the well-known tenure by which the Indians were accustomed to hold their lands from the earliest periods of their history, the guarantee therein given can only be held
35 to be a pledge by the United States that they should be allowed to occupy the lands and use them after their nomadic fashion as long as they saw fit to remain upon them. If any members of a tribe should abandon the lands and conclude to reside

elsewhere those leaving would carry no title to the land along with them; their right to the enjoyment of the land being dependent upon their remaining upon it. And the condition contained in the patent (copied from the act of 28th of May, 1830), "that the lands hereby granted shall revert to the United States if the said Cherokee Nation becomes extinct or abandons the same," seems to be conceived with reference to this quality of the title granted. But by the treaty of 1835 the United States in consideration of $500,000 agreed to convey *in fee-simple* by patent, a further tract of land estimated to contain 800,000 acres. This was the only support of the *fee-simple estate* claim. The patent, which comprehends the three parcels of land, amounting to more than fourteen millions of acres, although reciting that it was provided in the treaty of 1835 that a patent should issue in *fee-simple* for this third tract of 800,000 acres, yet uses no such language in the habendum clause, but only declares the United States have given and granted and do give and grant all the said lands "to the Cherokee Nation forever," without any words of limitation.

But it appears from the papers in the case that the third tract of 800,000 acres to which the *fee-simple title*, according to the treaty of 1835, was to attach, has been sold by the Cherokee Nation with the assent of the United States; and so there now remains no land in the Cherokee possession under fee-simple title. Their possession as tenants by occupancy is guaranteed to them forever, but it
36 must be held still to partake somewhat of the old nomadic style of possession. According to the accounts of the early settlers, as stated in Hildreth's History of the United States, vol. 1, pp. 56–60. "The hunting grounds and territory of the Indians appertained not to the chiefs nor to the individuals, but to the tribes or confederacy. The habits of almost all the tribes were more or less mig-atory. They knew little or nothing of the comforts of a settled habitation. They seemed always uneasy; always on the point of going somewhere else."

Of course, the conditions now existing with respect to these interesting people are vastly different from those ascribed to their ancestors by contemporaneous observers and assumed by the Supreme Court in its earlier decisions to be still existing. The courts now, in common with the intelligent people of the land, recognize the increasing intelligence of a people steadily advancing towards an equality of enlightenment with their fellow-citizens of the Republic, who observe their progress with sincere satisfaction.

As the supposed difference in the tenure of the lands of the Cherokee Nation from that of the other tribes, is the only reason assigned by the complainants for exempting them from the effect of the numerous decisions of the Supreme Court recognizing the constitutionality of the various acts of Congress, which have been assailed from time to time by several of the Indian tribes and their members, as unjust intrusions upon their rights, there seems no reason why the Cherokee Nation should not stand with the other civilized Indian tribes as controlled by the clearly expressed
37 provisions of the act of Congress now under examination.

If that act is to control with respect to the other five civilized Indian tribes, it is equally efficacious against the Cherokees.

Indeed the point seems scarcely involved in any doubt since the decision in Stephens *v.* The Cherokee Nation 174 U. S. p. 489. There the Supreme Court examined the question as to the act of 28th June 1898, although it was passed after the judgments there under examination had been rendered, stating that the inference was not unreasonable that a principal object intended to be secured by an appeal was the testing of the constitutionality of that act. It recognizes the act as sweeping and comprehensive, and comments upon many of its sections; and refers to the elaborate opinions of Judge Springer and the other judges of the Indian Territory, which consider the subject in all its aspects; including the various treaties, tribal constitutions and laws &c.; and concludes by declaring that the Supreme Court holds the entire legislation constitutional.

In the face of such a judgment, rendered in a cause in which the Cherokee Nation itself was the party complainant, it seems needless to add another word. Indeed nothing but the zeal and ability with which the contrary view was presented before me by the complainants' counsel, could have justified the court in prolonging the discussion as far as I have done.

It is needless also to notice the other points presented by the counsel for the United States with much ability, for an examination of those questions would involve merely a repetition of the various questions, in the language of the highest of the courts.

38 I shall pass a decree sustaining the demurrer of the United States and dismissing the bill.

A. B. HAGNER,
Associate Justice.

Memorandum.

May 19, 1902.—$100 deposited by appellants in lieu of appeal bond.

39 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia,* } *ss:*

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 38, inclusive, to be a true and correct transcript of the record, as prescribed by rule 5 of the Court of Appeals of the District of Columbia in cause No. 22712, equity, wherein the Cherokee Nation *et al.* are complainants, and Ethan A. Hitchcock, Secretary of the Interior, is respondent, as the same remains upon the files and of record in said court.

Seal Supreme Court of the District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 19 day of May, A. D. 1902.

JOHN R. YOUNG, *Clerk.*

40 [Endorsed:] District of Columbia supreme court. No. 1221. The Cherokee Nation *et al.* appellants, *vs.* Ethan A. Hitchcock, Secretary of the Interior. Court of Appeals, District of Columbia. Filed May 19, 1902. Robert Willett, clerk.

41 In the Court of Appeals of the District of Columbia.

THE CHEROKEE NATION ET AL., Appellants, *vs.* ETHAN A. HITCHCOCK, Appellee. } No. 1221.

At the special instance of the appellants it is stipulated and agreed between the respective parties to the above cause that the contention of the appellee herein is largely along the line of that which was sustained by the decision of this court in the case of Lone Wolf *et al. v.* Ethan A. Hitchcock *et al.*, that therefore with the consent of the court the record herein need not be printed, and a decree in affirmance of the decree of the court below may be entered herein without argument, such submission, however, not to affect the right of the appellants herein to take a further appeal to the Supreme Court of the United States.

WM. M. SPRINGER,
Solicitor for Appellants.
WILLIS VAN DEVANTER,
Solicitor for Appellee.

(Endorsed:) No. 1221. In the Court of Appeals of the District of Columbia. The Cherokee Nation *et al.*, appellants, *v.* Ethan A. Hitchcock, appellee. Stipulation. Court of Appeals, District of Columbia. Filed May 20, 1902. Robert Willett, clerk.

42 In the Court of Appeals of the District of Columbia.

THE CHEROKEE NATION ET AL., Appellants, *vs.* ETHAN A. HITCHCOCK, Appellee. } No. 1221.

Now come here the appellants and move the court that the printing of the record in this case be dispensed with, and that the case be submitted to the court without argument, and for cause thereof show to the court the stipulation, this day filed, between counsel for the respective parties.

WM. M. SPRINGER,
Solicitor for Appellants.

(Endorsed:) No. 1221. Court of Appeals, D. C. April term, 1902. The Cherokee Nation, *et al.*, appellants, *vs.* Ethan A. Hitchcock. Motion to dispense with printing record. Court of Appeals, District of Columbia. Filed May 20, 1902. Robert Willett, clerk.

TUESDAY, *May 20th, A. D.* 1902.

THE CHEROKEE NATION and THOMAS M. BUFFINGTON, Joseph H. La Hay, *et al.*, Appellants, *vs.* ETHAN A. HITCHCOCK, Secretary of the Interior. } No. 1221.

On motion of counsel for the appellants, it is ordered by the court that the printing of the record in the above-entitled cause be dispensed with, as per stipulation of counsel: Whereupon this cause was submitted to the consideration of the court on the transcript of record filed herein.

43 THE CHEROKEE NATION and THOMAS M. BUFFINGTON, Joseph M. La Hay, John R. McIntosh, Henry C. Meigs, Who Sue as Well for Themselves as for All Other Citizens of the Cherokee Nation of Indians Residing in the Indian Territory, Appellants, *vs.* ETHAN A. HITCHCOCK, Secretary of the Interior. } No. 1221.

For the reasons stated in the opinion of this court in the case of Lone Wolf, *et al.*, *vs.* Ethan A. Hitchcock, *et al.*, decided at the January term, 1902, and upon the stipulation of the parties, filed in this cause, the order of the court below from which the present appeal is taken, is affirmed.

(Endorsed:) No. 1221. The Cherokee Nation, *et al.*, appellants, *vs.* Ethan A. Hitchcock, Sec'y of the Interior. Opinion *per curiam*. Court of Appeals, District of Columbia. Filed May 21, 1902. Robert Willett, clerk.

44 WEDNESDAY, *May 21st, A. D.* 1902.

THE CHEROKEE NATION and THOMAS M. BUFFINGTON, Joseph M. La Hay, John R. McIntosh, Henry C. Meigs, Who Sue as Well for Themselves as for All Other Citizens of the Cherokee Nation of Indians Residing in the Indian Territory, Appellants, *vs.* ETHAN A. HITCHCOCK, Secretary of the Interior. } No. 1221. April Term, 1902.

Appeal from the supreme court of the District of Columbia.

This cause came on to be heard on the transcript of record from the supreme court of the District of Columbia, and was argued by counsel. On consideration whereof, it is now here ordered, adjudged and decreed by this court that the order of the said supreme court in this cause be, and the same is hereby, affirmed with costs.

Per MR. CHIEF JUSTICE ALVEY.

May 21, 1902.

THE CHEROKEE NATION and THOMAS M. BUFFINGTON, Joseph M. La Hay, John R. McIntosh, Henry C. Meigs, Who Sue as Well for Themselves as for All Other Citizens of the Cherokee Nation of Indians Residing in the Indian Territory, Appellants,
vs.
ETHAN A. HITCHCOCK, Secretary of the Interior. } No. 1221.

On motion of Mr. Wm. M. Springer of counsel for the appellants in the above entitled cause, it is ordered by the court that said appellants be, and they are hereby, allowed an appeal to the Supreme Court of the United States. And it is further ordered that said appellants deposit with the clerk the sum of one hundred dollars for costs, in lieu of bond.

Memorandum.

May 27, 1902.—$100 deposited for costs in lieu of bond.

45 UNITED STATES OF AMERICA, *ss:*

To Ethan A. Hitchcock, Secretary of the Interior, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal, filed in the clerk's office of the Court of Appeals of the District of Columbia, wherein The Cherokee Nation, and Thomas M. Buffington, Joseph M. La Hay, John R. McIntosh, Henry C. Meigs, who sue as well for themselves as for all other citizens of the Cherokee Nation of Indians residing in the Indian Territory,—appellants and you are appellee, to show cause, if any there be, why the decree rendered against the appellants should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable R. H. Alvey, Chief Justice of the Court of Appeals of the District of Columbia, this 27th day of May, in the year of our Lord one thousand nine hundred and two.

R. H. ALVEY,
Chief Justice of the Court of Appeals of the District of Columbia.

Service accepted May 28, 1902.
WILLIS VAN DEVANTER,
Assistant Attorney General.

46 [Endorsed:] Court of Appeals, District of Columbia. Filed May 28 1902 Robert Willett clerk

47 Court of Appeals of the District of Columbia.

I, Robert Willett, clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing is a true and complete transcript of the record and all proceedings in said Court of Appeals in the case of The Cherokee Nation, and Thomas M.

Buffington, Joseph M. La Hay, John R. McIntosh, Henry C. Meigs, who sue as well for themselves as for all other citizens of the Cherokee Nation of Indians residing in the Indian Territory, appellants, *vs.* Ethan A. Hitchcock, Secretary of the Interior, No. 1221, April term, 1902, as the same remains upon the files and records of said Court of Appeals.

Seal Court of Appeals, District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this 28th day of May, A. D. 1902.

ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.

Endorsed on cover: File No. —. District of Columbia Court of Appeals. Term No. —. The Cherokee Nation, and Thomas M. Buffington, Joseph M. La Hay, John R. McIntosh, Henry C. Meigs, who sue as well for themselves as for all other citizens of the Cherokee Nation of Indians residing in the Indian Territory, appellants, *vs.* Ethan A. Hitchcock, Secretary of the Interior. Filed —— —, 190–.